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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _07 July 2008_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1,2,4-9 and 11-14_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1,2,4-9 and 11-14_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All   b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.　　This action is in response to the amendment filed 7/7/2008.

2.　　Claims 1, 2, 4-9 and 10-14 remain pending and have been considered below; No amendments were made to the claims.

Response to Amendment

3.　　Prior rejection to claims 1, 2, and 4-7 under 35 USC 101 is hereby maintained because no amendments were made to the claims.

Response to Arguments

4.　　Applicant's arguments filed 7/7/2008 have been fully considered but they are not deemed persuasive.

　　Applicant asserts on pages 5-10 that Harrison fails to teach *function identification means for automatically determining which function is presently executing in said identified software application; polling means for bypassing said Reporting Application Interface and periodically polling said presently executing function in said identified software application to retrieve statistics data indicative of operation of said presently executing function in said identified software application* as recited in claims 1 and 8.

(1) Applicant on page 6 of the amendment assumed that *the Graphical User
Interface (GUI) of the monitoring system of Harrison is the proprietary report Application
Interface (API)*.

Examiner respectfully disagrees with the applicant's statement. The Graphical
User Interface (GUI) is a **user interface** application. User interacts with the monitoring
system through the GUI. GUI accepts inputs, provides outputs, reports, feedbacks, etc.
In contrast, an Application Programming Interface (API) is **application/program
interface** application that can be called from one application program to access
features of another program or can be used to communicate with the operating system.
Thus, the Graphical User Interface (GUI) of Harrison is not an API.

Even assuming that the Graphical User Interface (GUI) of Harrison is the API,
Harrison's monitoring system is periodically polling the performance statistics with or
without using the API.

Harrison teaches:

"In addition, a skilled artisan will recognize from the disclosure herein that the
monitoring system may advantageous access some or all of the performance
statistics **through, for example, an open application program interface (API)
of the application being monitored**. On the other hand, a skilled artisan will
recognize from the disclosure herein that the monitoring system 220 may also
**employ software modules designed to extract some or all of the
performance statistics without accessing or calling the API. By avoiding a
call to the API**, the software modules extract the performance statistics without

adding significant program loads to the application, thereby advantageously

allowing for more frequent polling, more precise polling, or both." (see col. 18:62

– col. 19:7).

In other words, Harrison's monitoring system employs software modules

designed (i.e. any designed software applications other than API) to poll the

performance data of the executed application.

(2) Applicant on page 7 of the amendment further states:

"Applicant's system continuously monitors the running software application and

identifies which function in this software application is presently executing at

every, polling increment of-time. This process, therefore, produces a **continuum**

of data, by creating periodic snapshots of the present operation of the software

and its executing functions, so the user can view the history of the software

application even if there are no failures or trigger events. By periodically polling,

Applicant's system avoids the enormous data creation of the prior art processes

(which trace all of the statistics generated by executing software applications),

yet tracks the continuous operation of the software application and its presently

executing functions".

"In contrast to the monitoring system of the Harrison Patent, Applicant's claimed

system bypasses the Reporting Application Interface and periodically polls the

presently executing function within the identified software application to create a

continuum of data to enable the user to view the continuing operation of the

monitored system, as is recited in claim 1"

Applicant is advised that limitations from the specification can not be brought into

the claims for arguing purpose.

(3) Applicant on page 7 of the amendment further asserts that Harrison fails to

teach "function identification means for automatically determining which function is

presently executing in said identified software application."

Examiner respectfully disagrees with the allegation as argued.

Harrison teaches:

"The visual map 120 comprises a snapshot high-level overview of on-screen

graphics representing major application components (i.e. functions) and groups

of applications components (i.e. group of functions) of the application being

monitored."

Thus, Harrison's monitoring system periodically snapshots the functions of the

executed application(s) being monitored to user. In other words, it determines which

function of the monitored application is executed for polling performance statistics.

(4) Applicant on page 9 of the amendment asserts that Wilson is an error

reporting system, not a monitoring system since it is solely oriented to a trigger based

paradigm, where client data is gathered only once the trigger event is detected, and

there is no data collection about the operation of the monitored system absent the

trigger event.

Examiner respectfully disagrees with the allegations as argued. Although,

Wilson' approach is an error reporting system, however, the error reporting system has

to monitor the application in order to report the errors by using the communication stack

(i.e. call stack) to provide data about the functions of the monitored application.

Thus, the use of communication stack is well known at the time Harrison's

invention was made. Therefore, the modification would have been obvious because the

communication stack can provide information (i.e. performance data) regarding all the

active functions of the monitored application.

Examiner is entitled to give claim limitations their broadest reasonable

interpretation in light of the specification. See MPEP 211 [R-1] Interpretation of Claims-

Broadest Reasonable Interpretation. During patent examination, the pending claims

must be given their broadest reasonable interpretation consistent with the specification.

Applicants always have the opportunity to amend the claims during the

prosecution and broad interpretation by the examiner reduces the possibility that the

claims, once issued, will be interpreted more broadly than is justified. See In re Prater,

162 USPQ 541, 550-51 (CCPA 1969).

Examiner's Note

5.   Applicant appears to be attempting to invoke 35 U.S.C. 112 6th paragraph in

claims 1, 2, and 4-7 by using "means-plus-function" language. However, Examiner

notes that the only "means" for performing these cited functions in the specification

appears to be software. Since no other specific structural limitations are disclosed in

the specification, the claims have not invoked 35 U.S.C. 112 6th paragraph.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Regarding claim 1 recite a system but it appears reasonable to interpret this

system by one of ordinary skill in the art as software per se. Application's specification

provides no explicit and deliberate definition of the components such as "software

selection means", "function identification means", "polling means", and "data repository

means", that make up the system other than they could be software components, which

are directed to functional descriptive material, per se, and are therefore, non-statutory

subject matter. Claims 2, 4-7 directly or indirectly depend on claim 1, and therefore,

suffer the same deficiency.

Applicant is suggested to amend claim one to include in the system at least one

processor or memory.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8.   Claims 1, 2, 5-9, and 12-14 are rejected under 35 U.S.C. 102(e) as being

anticipated by Harrison (United States Patent No.: US 6,901,582).

As per claims 1 and 8:

Harrison teaches:

Software application selection means, responsive to user input, for

identifying a software application, equipped with a Reporting Application

Interface, that is executing on said processor (see at least Fig. 1a-1e; also Fig.

3);

Function identification means for automatically determining which function

is presently executing in said identified software application (see at least Fig. 1a-

1e; also see at least col. 6, lines 21-25 "The visual map 120 comprises a

snapshot high-level overview of on-screen graphics representing major

application components (i.e. functions) and groups of application components of

the application being monitored");

Polling means for bypassing said Reporting Application Interface and

periodically polling said presently executing function in said identified software

application to retrieve statistics data indicative of operation of said presently

executing function in said identified software application (see at least col. 10,

lines 65-67 "According to an embodiment, the monitoring system 220 periodically

issues an SQL statement requesting data from DBMS 300 representing

performance statistics of the DBMS 300, stored in the database files 335"; also

see col. 19, lines 1-7 "the monitoring system 220 may also employ software

modules designed to extract some or all of the performance statistics without

accessing or calling the API. By avoiding a call to the API, the software modules

extracts the performance statistics without adding significant program loads to

the application, thereby advantageously allowing for more frequent polling, more

precise polling, or both") and

Data repository means for storing data indicative of an identity of said

presently executing function and said retrieved statistics data in a memory (see

at least Fig. 1a-1e and Fig. 3; also see col. 11, line 1 "performance statistics of

the DBMS 300, stored in the database files 335").

As per claims 2 and 9:

Harrison further teaches:

Means, responsive to user data input, for setting a polling interval for said

polling means (see at least col. 18, lines 47-50 "...executing the monitoring

system 220 for a predetermined time interval, and then setting the thresholds 620

as percentage increase or decreases from the performance statistics measured

during the time intervals...may be customizable by direct user interaction").

As per claims 5 and 12:

Harrison further teaches:

Means for monitoring all the functions embodied in the software

application (see at least Figs 1a-1e and 3).

As per claims 6 and 13:

Harrison further teaches:

Means for storing statistics data from all of the functions presently

executing within said software applications (see at least Fig. 3; also see col. 11,

line 1 "data from DBMS 300 representing performance statistics of the DBMS

300, stored in the database files 335").

As per claims 7 and 14:

Harrison further teaches:

Means for storing said data indicative of an identity of said presently

executing function and said retrieved statistics data individually in the data

repository to thereby enable the separate analysis of the statistics data (see at

least Fig. 1a-1e and Fig. 3; also see col. 11, line 1 "performance statistics of the

DBMS 300, stored in the database files 335").

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Harrison (United States Patent No.: US 6,901,582), in view of Wilson et al. (United

States Patent No.: US 6,714,976).

As per claims 4 and 11:

Harrison does not explicitly teach:

Means for retrieving statistics data directly from the process call stack of

said identified software application.

However, Wilson teaches:

Means for retrieving statistics data directly from the process call stack of

said identified software application (see at least col. 5, lines 52-54 "because each

agent is coupled into the client communication stack, it can monitor the loop back

data that passes only through the communication stack").

Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Harrison's approach to include a communication stack (i.e. call stack) as taught by Wilson. One would have been motivated to modify because the communication stack provides information regarding to all the active components (i.e. functions) of the software application being monitored and also the loop back data that passes only through the communication stack to the monitoring system.

Conclusion

11.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571)

270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM -

3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
9/26/2008
/Wei Y Zhen/
Supervisory Patent Examiner, Art Unit 2191